

Bureau of Indian Affairs, Interior

§ 42.8

(b) For further information on ADR processes and how to use them, contact the Office of Collaborative Action and Dispute Resolution by:

(1) Sending an e-mail to: *cadr@ios.doi.gov*; or

(2) Writing to: Office of Collaborative Action and Dispute Resolution, Department of the Interior, 1849 C Street NW., MS 5258, Washington, DC 20240.

§ 42.5 When can a school use ADR processes to address an alleged violation?

(a) The school may address an alleged violation through the ADR processes described in § 42.4, unless one of the conditions in paragraph (b) of this section applies.

(b) The school must not use ADR processes in any of the following circumstances:

(1) Where the Act requires immediate expulsion (“zero tolerance” laws);

(2) For a special education disciplinary proceeding where use of ADR would not be compatible with the Individuals with Disabilities Education Act (Pub. L. 105–17); or

(3) When all parties do not agree to using alternative dispute resolution processes.

(c) If ADR processes do not resolve matters or cannot be used, the school must address alleged violations through the formal disciplinary proceeding described in § 42.8.

§ 42.6 When does due process require a formal disciplinary hearing?

Unless local school policies and procedures provide for less, a formal disciplinary hearing is required before a suspension in excess of 10 days or expulsion.

§ 42.7 What does due process in a formal disciplinary proceeding include?

Due process must include written notice of the charges and a fair and impartial hearing as required by this section.

(a) The school must give the student written notice of charges within a reasonable time before the hearing required by paragraph (b) of this section. Notice of the charges includes:

(1) A copy of the school policy allegedly violated;

(2) The facts related to the alleged violation;

(3) Information about any statements that the school has received relating to the charge and instructions on how to obtain copies of those statements; and

(4) Information regarding those parts of the student’s record that the school will consider in rendering a disciplinary decision.

(b) The school must hold a fair and impartial hearing before imposing disciplinary action, except under the following circumstances:

(1) If the Act requires immediate removal (such as, if the student brought a firearm to school) or if there is some other statutory basis for removal;

(2) In an emergency situation that seriously and immediately endangers the health or safety of the student or others; or

(3) If the student (or the student’s parent or guardian if the student is less than 18 years old) chooses to waive entitlement to a hearing.

(c) In an emergency situation under paragraph (b)(2) of this section, the school:

(1) May temporarily remove the student;

(2) Must immediately document for the record the facts giving rise to the emergency; and

(3) Must afford the student a hearing that follows due process, as set forth in this part, within ten days.

§ 42.8 What are a student’s due process rights in a formal disciplinary proceeding?

A student has the following due process rights in a formal disciplinary proceeding:

(a) The right to have present at the hearing the student’s parents or guardians (or their designee);

(b) The right to be represented by counsel (legal counsel will not be paid for by the Bureau-funded school or the Secretary);

(c) The right to produce, and have produced, witnesses on the student’s behalf and to confront and examine all witnesses;

(d) The right to the record of the disciplinary action, including written findings of fact and conclusions;